IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 287 OF 1995

Shri. Bhausaheb Murlidhar Thombre,
Age 38 years, R/o. Vikharni,
Tq. Yeola, Dist. Nashik ...Appellant.

Versus

1. The State of Maharashtra

2. Hanumanta Trimbak Shelar,
Age 51 years, R/o. Vikharni,
Tq. Yeola, Dist. Nashik ...Respondents

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Shri. S.V. Marwadi, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for State.

Appellant and respondent No.2 present in person.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 30TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. The appellant who is the original accused No.1, has been convicted under Section 307 of I.P.C. by the learned III Additional Sessions Judge, Nashik in Sessions case No. 226 of 1994. For the said offence, the appellant has been sentenced to R.I. for three years and to pay fine of Rs.10,000/- i/d R.I. for six months. The learned Sessions Judge further directed that if the fine is realized in full or in part, upto the amount of Rs.5,000/- or Rs.5,000/- as the case may be, depending upon

recovery of the fine, shall be paid to P.W.7 Shri. Hanumanta Trimbak Shelar, as a compensation. P.W.7 Shri. Hanumanta Trimbak Shelar is the sole injured witness in the present case. The fine amount of Rs.10,000/- has been deposited by the appellant.

2. An affidavit has been filed by P.W.7 Shri. Hanumanta Trimbak Shelar who is the sole injured person in the present case. In the said affidavit he has stated that he and the appellant are residents of the same village and the appellant is leading peaceful life in the village. He is not involved in any untoward incident. Now the relations between the the appellant and this injured witness are cordial and good and they are on visiting terms with each other. He has further stated in the said affidavit that since the appellant has realized his mistake and he is repenting for the same hence he may not be sent back to jail. The said affidavit is taken on record and marked as "X" for identification. Today the sole injured witness in the said case i.e. P.W.7 Shri. Hanumanta Trimbak Shelar is present before the Court. On enquiry by the Court he has stated that he and the appellant settled the matter among themselves and they are residing amicably and peacefully in the village. I have ascertained that P.W.7 Shri. Hanumanta Trimbak Shelar has

voluntarily decided to settle the matter. The appellant has also filed an affidavit which is also taken on record and marked as "X-1" for identification.

3. However, it is seen that the appellant (original accused No.1) has been convicted under Section 307 of I.P.C. which is a non cognizable offence, hence, I am not inclined to acquit the appellant on the basis of the said compromise. However, useful reference may be made to the case reported in **1995 Supp. (4) SCC page 631 Salim and others V/s. State of M.P.** wherein similar facts arose. In the said case, the appellants were convicted under Section 307 r.w. 34 of I.P.C. The Apex Court had observed thus:-

> "We cannot acquit the accused persons on the basis of the compromise. However, as held by this Court in Ram Pujan and others V/s. State of U.P. the fact that they have compromised the matter and have patched up their differences and the fact that since then they have been living together happily, has relevance so far as the question of sentence is concerned."

. The Hon’ble Apex Court after having been

satisfied of genuineness of the compromise allowed the appeal and directed that the sentence should be altered to that already undergone.

4. In the present case also, the appellant has been convicted under Section 307 of I.P.C. The facts in the present case and those in the case of Salim (supra) are similar. Hence, I am also inclined to pass similar orders with a view that henceforth the appellant and the injured witness Shri Hanumanta Shelar will live in peace and harmony in the village and henceforth no untoward incident takes place in the village.

5. In this view of the matter, this appeal is partly allowed. The conviction of the appellant under Section 307 of I.P.C. is confirmed, however, the sentence is reduced to the period already undergone by the appellant. The appellant is on bail, his bail bond shall stand cancelled. As the appellant has already deposited fine amount of Rs.10,000/-, Rs.5,000/- out of the said amount as directed by the learned Sessions Judge be handed over to the injured witness P.W.7 Shri. Hanumanta Trimbak Shelar.

6. Criminal appeal is partly allowed in the above terms.

7. Authenticated copy of this order/judgment be supplied to the parties.